

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA (1) APPROVING A REIMBURSEMENT AGREEMENT BETWEEN THE CITY AND RIDA CHULA VISTA, LLC ("DEVELOPER") TO CONSTRUCT SPECIFIED SEWER IMPROVEMENTS; (2) FINDING THE DEVELOPER'S PROPOSED SOLE SOURCE AWARD TO ITS GENERAL CONTRACTOR TO CONSTRUCT SUCH IMPROVEMENTS TO BE IN THE BEST INTEREST OF THE PUBLIC, PURSUANT TO CHULA VISTA MUNICIPAL CODE SUBSECTION 2.56.160(H), "DEVELOPER-PERFORMED PUBLIC WORKS"; (3) DELEGATING TO THE CITY MANAGER AUTHORITY TO ASSURE COMPLIANCE WITH APPLICABLE PROCUREMENT REQUIREMENTS FOR SUBCONTRACTORS; AND (4) APPROPRIATING FUNDS THEREFOR (4/5 VOTE REQUIRED)

WHEREAS, the City, RIDA Chula Vista, LLC ("Developer"), and the San Diego Unified Port District ("District") entered into a Disposition and Development Agreement for the Resort Hotel Convention Center Project (Chula Vista Bayfront Master Plan Parcel H-3), effective May 7, 2018 (the DDA); and

WHEREAS, pursuant to the DDA, in addition to a resort hotel, consisting of no less than 1,570 rooms and no more than 1,600 rooms (the "Hotel") and related resort-level amenities as more fully described in the Scope of Development attached to the DDA (collectively, the "Developer's Private Improvements") the Developer shall construct a portion of the substantial public improvements required for development of the Chula Vista Bayfront Master Plan Area (the "Developer's Phase 1A Infrastructure Improvements"); and

WHEREAS, the Scope of Development attached to the DDA provides that the Developer shall construct certain in-road sewer improvements included in the Developer's Phase 1A Infrastructure Improvements, consisting of: E Street (from G Street to H Street), the G Street Connection, and the H-3 Utility Corridor (collectively, the "Developer's Sewer Improvements" or "Project"), to be funded by the City's Sewer Facility Contribution, as defined in the DDA; and

WHEREAS, pursuant to Chula Vista Municipal Code (CVMC) Section 13.14.030(B) (Connection to Public Sewer – Fee), any person desiring to connect, directly or indirectly, any parcel or any building thereon to any public sewer which has been constructed at no cost to the parcel to be connected shall pay the one-time required fee for sewer connection to the City, with all revenue derived from such fees to be deposited into the Sewer Income Fund; and

WHEREAS, pursuant to CVMC Chapter 3.16 (Sewer Income Fund), all revenues collected under CVMC Section 13.14.030(B) shall be deposited into the "Sewer Income Fund" and may be used, in the discretion of the City Council and pursuant to a written contract, to reimburse any

person who has constructed sewer facilities, to the extent, as determined by the City Council, that such sewer facilities have benefited other properties; and

WHEREAS, construction of the Developer's Sewer Improvements will provide a public benefit to other property owners within the Chula Vista Bayfront Master Plan area; and

WHEREAS, the Developer's Sewer Improvements are estimated to total \$1,195,000 and are eligible for reimbursement from the Sewer Income Fund; and

WHEREAS, the City has sufficient funds in the Sewer Income Fund to reimburse Developer for the design and construction of the Developer's Sewer Improvements; and

WHEREAS, Developer desires to enter into a Reimbursement Agreement with the City in the form presented in Exhibit 1 to this resolution, so that it may obtain reimbursement for the eligible costs of designing and constructing Developer's Sewer Improvements; and

WHEREAS, CVMC Section 2.56.160(H) (Developer-Performed Public Works) regulates the procurement of developer-performed public works within the City; and

WHEREAS, CVMC Section 2.56.160(H)(1)(b) provides that a developer may award a contract for a developer-performed public work on a sole source basis where, in addition to compliance with all applicable requirements of CVMC Section 2.56.160(H), the City makes findings that an award of a sole source contract is in the best interest of the public because of the particular (A) performance capabilities of the proposed entity or contractor, (B) project characteristics, (C) manufacturing processes, (D) compatibility requirements, and/or (E) market or other conditions/circumstances that render the award of a sole source contract to be in the best interest of the public and the entity or contractor awarded a sole source contract for a developer-performed public work competitively bids all subcontracts for the developer-performed public work; and

WHEREAS, Developer intends to combine into one bid solicitation the construction of the Developer's Phase 1A Infrastructure Improvements, including the Developer's Sewer Improvements (the "Phase 1A Project"); and

WHEREAS, Developer has selected MMJV, a joint venture comprised of M.A. Mortenson Company ("Mortenson") and McCarthy Building Companies, Inc. ("McCarthy"), (the "General Contractor") for construction of the Developer's Private Improvements; and

WHEREAS, Developer has selected MMJV for the construction of the Developer's Private Improvements on the following basis: Mortenson is an industry leader with a wealth of experience in similar large-scale projects, including the recent construction of the Gaylord Rockies Resort and Convention Center project developed by a RIDA affiliate which makes it uniquely qualified to develop the Developer's Private Improvements; and McCarthy provides a strong local presence, positive reputation, relationships with the local subcontractor community, and a resume of large-scale development projects; and

WHEREAS, as authorized by CVMC Section 2.56.160(H)(1)(b), Developer is seeking City acceptance of MMJV as the sole source General Contractor for the Phase 1A Project improvements based on their belief that hiring MMJV as General Contractor for both the Developer's Private Improvements and the Phase 1A Project will provide for a compatible, streamlined, and successful approach that will result in time and cost efficiencies, and avoid logistical coordination issues that would otherwise and impede the overall schedule for the construction of the Developer's Private Improvements and the Phase 1A Project; and

WHEREAS, staff concurs that the MMJV is highly qualified to build all aspects of the project and concurs with RIDA's assessment that having one contractor build both the public and private improvements will enhance project implementation quality and timeliness. Accordingly, staff recommends that the City Council find that the sole source award of the general contract to MMJV is in the "best interests" of the public; and

WHEREAS, CVMC Section 2.56.160(H)(1)(b)(ii) requires the competitive bidding of all subcontracts for developer-performed public works, if the prime contract is awarded on a sole source basis; and

WHEREAS, CVMC Section 2.56.160(H)(2)(c) requires the solicitation of sealed competitive bids for subcontracts for developer-performed public works; and

WHEREAS, CVMC Section 2.56.160(H)(2)(d) states that "Developer shall award contracts (except for contracts awarded pursuant to subsection (H)(1)(b) of this section), and shall award, or shall cause the applicable entity or contractor to award, subcontracts for developer-performed public work to the lowest responsive and responsible bidder, or the bidder that is determined by developer to be the "best qualified contractor," subject to City approval. When determining the "best qualified contractor," developer shall consider, without limitation, a bidder's demonstrated competence, qualifications, ability to achieve timely completion, capacity, skill, compliance with bid documents, costs, and other relevant criteria; and

WHEREAS, Developer intends to award subcontracts for the Project to "best qualified contractors" to ensure that the Project is constructed in a timely manner by subcontracting teams that are best qualified to perform the work; and

WHEREAS, Developer has presented City staff with an outline of their process for selecting the "best qualified" subcontractor based upon a variety of factors including: past relevant / similar project experience, customer feedback from those projects, current backlog, available trades personnel resources, proposed supervisory / management personnel, financial capability, design capabilities (for design-build subcontracts), schedule management plan, quality management plan, and pricing; and

WHEREAS, the subcontractor selection process outlined by Developer does not include the solicitation of sealed bids; and

WHEREAS, certain conditions and circumstances may arise in the subcontractor selection process that require sole source subcontract awards; and

WHEREAS, staff is satisfied that Developer's proposed process meets the intent of the City's competitive bidding requirements and will result in the selection of the "best qualified" subcontractors consistent with City interests in high quality and timely construction per City standards and the agreements between the parties under the DDA; and

WHEREAS, final subcontractor bids for the Project will not be received or awarded until after the approval of this resolution; and

WHEREAS, as subcontracts for the Project have not yet been awarded, staff recommends authorizing the City Manager, or designee, to make findings and to waive the competitive bid requirement for subcontractors and to approve subcontract awards for the Project to "best qualified" subcontractors; and

WHEREAS, CVMC Section 2.56.160(H)(1)(b) establishes the conditions and circumstances under which a sole source contract may be approved, including: performance capabilities of the proposed entity or contractor; project characteristics; manufacturing processes; compatibility requirements; and market or other conditions/circumstances that render the award of a sole source contract to be in the best interest of the public; and

WHEREAS, staff recommends that the considerations prescribed in CVMC Section 2.56.160(H)(1)(b) be employed in any decision of the City Manager, or designee, to waive the competitive bid requirement for subcontractors to allow for a sole source subcontract award; and

WHEREAS, CVMC Section 2.56.160(H)(2)(d) states that "[i]f a developer awards a prime contract or subcontract to a bidder other than the lowest responsive and responsible bidder for an item or unit of work, then all payments, reimbursements, and credits against developer impact fees or other developer fees or obligations ("development credits") shall not exceed the amount of the lowest responsive bidder for that item or unit of work. This not-to-exceed limitation may be waived where: (i) The amount of the bid does not exceed the engineer's estimate or other approved estimate for the developer-performed public work by more than 10 percent; and (ii) City approves the waiver in accordance with subsection (H)(6) of this section."; and

WHEREAS, CVMC Section 2.56.160(H)(6) provides that all or portions of the developer-performed public work ordinance may be waived where "the waiver is in the best interest of the public after consideration of factors including, without limitation, project costs, time for completion, and other relevant criteria, and (ii) appropriate safeguards are in place to protect the public interest"; and

WHEREAS, Developer may request a waiver of the not-to-exceed limitation pursuant to 2.56.160(H)(2)(d) prior to award of subcontracts; and

WHEREAS, appropriate safeguards are in place to protect the public interest, including the previously described 10 percent not-to-exceed limit; and

WHEREAS, as subcontracts have not yet been awarded, staff recommends authorizing the City Manager, or designee, to make findings and waive the not-to-exceed limitation in accordance with CVMC Section 2.56.160(H)(2); and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chula Vista as follows:

1. After consideration of CVMC 3.16.010 and the Recitals above, the City Council has determined that the construction of the Project will provide a public benefit to other properties within the Chula Vista Bayfront Master Plan area.
2. The City Council approves the Reimbursement Agreement, between the City and RIDA Chula Vista, LLC to Construct Specified Sewer Improvements, in the form presented, with such minor modifications as may be required or approved by the City Attorney, a copy of which shall be kept on file in the Office of the City Clerk, and authorizes and directs the City Manager to execute same.
3. After consideration of factors in CVMC 2.56.160(H)(1)(b)(i), staff's report on this item, and the Recitals above, the City Council finds that the award of a sole source contract to MMJV for the design and construction of the Project is in the best interest of the public.
4. After consideration of the facts stated in staff's report on this item and the Recitals above, the City Council finds that the waiver of the sealed bid requirement for subcontractors is in the best interest of the public and appropriate safeguards are in place to protect the public interest.
5. The City Council authorizes and directs the City Manager, or his/her designee, to oversee and implement the subcontractor solicitation and award process provided in CVMC 2.56.160(H), including, without limitation the following:
 - a. The authority, pursuant to CVMC Section 2.56.160(H)(6), after consideration of factors for sole source contracts as provided in CMVC Section 2.56.160(H)(1)(b), to make findings and approve the waiver of the competitive bid requirements for subcontractors as provided in CVMC 2.56.160(H)(2)(b).
 - b. The authority, pursuant to CMVC Section 2.56.160(H)(2)(d), to make findings and approve the award of subcontracts for the Project to "best qualified contractors".
 - c. The authority, pursuant to CVMC Section 2.56.160(H)(2)(d), to make findings and waive the not-to-exceed limitation for award of subcontracts for the Project.

Where necessary or appropriate for purposes of implementing this action, the City Council delegates its authority to the City Manager, or his/her designee, to waive requirements and make findings as required by CVMC Section 2.56.160(H).

6. BE IT FURTHER RESOLVED by the City Council of the City of Chula Vista, that it appropriates funds from the Sewer Income Fund to reimburse Developer pursuant to the Reimbursement Agreement between the City and RIDA Chula Vista, LLC to Construct Specified Sewer Improvements.

Presented by

Approved as to form by

Kelly G. Broughton, FASLA
Director of Development Services

Glen R. Googins
City Attorney